REMARKS

Claim 11 is added, and therefore claims 6 to 11 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for indicating that all copies of the certified copies of the priority documents have been received.

With respect to paragraph four (4) of the Office Action, claims 6 to 10 were rejected under 35 U.S.C. § 102(b) as unpatentable over Brambilla et al. (U.S. 6,199,903).

To reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

Claim 6 relates to a system for triggering a restraint system and provides for at least a first stage and a second stage of deployment, in which triggering of the second stage of deployment of the airbag is determined as a function of a combination of at least one criterion and the closing velocity. The "Brambilla" reference does not identically disclose (nor even suggest) the claim feature of "***triggering*** of the ***second stage*** of deployment of the airbag . . . as a function of at least one criterion and the closing velocity," as provided for in the context of the claim. The decision to deploy the first stage and the second stage is based on the acceleration signal alone. In contrast, the reference indicates that its "method for triggering a two-stage air bag generator,

which, ***on the basis of the received acceleration signals*** of an acceleration sensor, ***makes a decision to ignite the second stage*** in a reliable manner and adapted to the seriousness of the accident, and permits a precise control of the ***time difference*** between triggering the first and the second stage." ("Brambilla", column 3, lines 14 to 20) (emphasis added).

Thus, in the reference, the decision to deploy the second stage is not based on the claim feature of closing velocity but, rather, on the acceleration signal alone. Other data is used to adjust the time difference between the triggering of the first and the second stage. In fact, the reference further states that:

> The method has the advantage that the point in time of the triggering of the second stage can be adapted to the air bag generator used and can be selected such that the ignition of the second stage definitely does not take place earlier than allowed on account of the modular stability and not earlier than absolutely necessary. Thereby the resulting time period T1 gained is fully utilized for evaluating the acceleration signal and improves the reliability of the evaluation with respect to the seriousness of the accident.

("Brambilla" reference, column 3, lines 31 to 39.)

Thus, the time after the deployment of the first stage is used to select the time period T1 for the second stage based on the severity of the accident. The time limit T1 has an upper and lower limit, indicating that the subsequent measurements are used to determine ***when***, not whether the triggering of the second stage occurs. "A lower limit T1min for the time period T1 is . . . formed by that time difference between the first and the second ignition which just barely still permits a taut filling of the air bag within filling times of typically 40 msec.

An upper limit T1max for the time period T1 is caused by the occupant's forward displacement which, in the case of the ignition of the second stage, must not have progressed too far in order to minimize the risk of injury." ("Brambilla" , column 5, lines 53 to 61.) The ***decision*** for triggering is discussed by the "Brambilla" reference as to its Figure 2 and Figure 3, with respect to different severity zones. Depending on the severity of the crash, the appropriate zone is assigned, which in turn indicates whether the first stage only or both stages are deployed. The "Brambilla" reference states that "[i]t is important for the method ... that the zone method is used exclusively for the ***triggering decision*** for the second stage." ("Brambilla" reference, column 7, lines 26 to 28 (emphasis added)). These security zones are based on the speed-time diagram, as in Figure 3 of the reference. The determination for triggering is not based on at least

one criteria and the closing velocity. Therefore, the "Brambilla" reference does not identically disclose (nor even suggest) the claim feature of "**triggering** of the **second stage** of deployment of the airbag...as a function of at least one criterion and the **closing velocity**" as provided for in the context of the claimed subject matter. For at least the reasons mentioned above, this rejection is considered to be traversed.

Accordingly, claim 6 and its dependent claims 7 to 10 are allowable.

New claim 11 does not add any new matter and is supported by the present application, including the specification. Claim 11 depends from claim 6 and is therefore allowable for the same reasons as claim 6.

Accordingly, claims 6 to 11 are allowable.

CONCLUSION

It is therefore respectfully submitted that claims 6 to 11 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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